

ROUTING SLIP

ROUTING AND TRANSMITTAL SLIP

11 Feb 87

DDA SUBJECT FILE COPY

ER-87-0448X

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	EXDIR				
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5	DDI				
6	DDA		X		
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC		X		
11	IG				
12	Compt				
13	D/OCA				
14	D/PAO				
15	D/PERS				
16	D/Ex Staff				
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SUSPENSE

Date

Remarks

Executive Secretary

11 Feb '87

Date

TO: (Name, office symbol, number, building, Agency/Post)

Initials Date

1. DIRECTOR OF PERSONNEL (FOR EEO)

2.

3.

4.

5.

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

#1 - FOR ACTION: PLEASE REVIEW AND DETERMINE

IF CHANGES ARE REQUIRED

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

EXA/DDA

Phone No.

5041-102

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
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* U.S.G.P.O.: 1983 - 421-529/320

U.S. Department of Justice



Civil Rights Division

87-0448x

DDA/REG
LOGGED

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 4 1987

MEMORANDUM

TO: Heads of Executive Agencies

FROM: Wm. Bradford Reynolds *WR*
Chairman
Interagency Coordinating Council

SUBJECT: Coverage of Temporary Impairments as
"Handicaps" Under Title V of the
Rehabilitation Act of 1973

I am writing in my capacity as Chairman of the Interagency Coordinating Council to inform you of the Council's recent policy statement on the issue of the treatment of temporary impairments as handicaps under title V of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791 et seq. The Council has authorized me to distribute this policy statement, which provides that temporary impairments that substantially limit major life activities are handicapping conditions, to all Executive agencies as guidance in implementing the provisions of the statute.

The Interagency Coordinating Council was established under the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, § 120(a); 29 U.S.C. § 794(c)). The Council's function is to:

maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistencies among the operations, functions, and jurisdictions of the various departments, agencies, and branches of the Federal Government responsible for the implementation and enforcement of [title V].

Seven Federal agencies are represented on the Council. These agencies are the Departments of Justice, Labor, Education, and Health and Human Services; the Equal Employment Opportunity Commission; the Office of Personnel Management; and the Architectural and Transportation Barriers Compliance Board. Three member agencies, the Department of Justice, the Department of Labor, and the Equal Employment Opportunity Commission, have government-wide Rehabilitation Act coordination authority.

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Title V of the Rehabilitation Act contains the civil rights provisions of the Act protecting the interests of handicapped persons. Section 501 provides for affirmative action and, implicitly, nondiscrimination in Federal employment of handicapped persons. The Equal Employment Opportunity Commission (EEOC) has direct authority to enforce the requirements of section 501 by virtue of section 4 of the President's Reorganization Plan No. 1 of 1978 (5 U.S.C. App., 1155). In addition, EEOC is charged by sections 1-201 and 1-301 of Executive Order 12067 (3 C.F.R., 1981 Comp., p. 205) with providing leadership and coordination in the enforcement of Federal laws and policies requiring equal employment opportunity without regard to handicap.

Section 503 provides for affirmative action in the employment of handicapped persons by contractors having Federal contracts in excess of \$2,500. Section 503 is enforced by the Department of Labor (DOL), which is charged under Executive Order 11758, section 2 (3 C.F.R., 1971-75 Comp., p. 841) with the responsibility (in consultation with the Department of Defense and the General Services Administration) of issuing section 503 implementing regulations.

Section 504 prohibits discrimination on the basis of handicap in programs and activities that are conducted by Federal agencies or that receive Federal financial assistance. Responsibility for coordinating the enforcement of section 504 was assigned to the Department of Justice by Executive Order 12250 (3 C.F.R., 1980 Comp., p. 298).

In order to meet its statutory obligation to eliminate inconsistencies in title V enforcement among Federal agencies, the Council is reviewing the enforcement policies of the member agencies to identify and eliminate any inconsistencies among them. Most recently, the Council has addressed the extent to which title V coverage extends to people who have temporary impairments, e.g., broken bones, that are not commonly regarded as handicapping conditions. The Rehabilitation Act provides that for the purposes of title V the term "handicapped individual" means

any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such an impairment, or (C) is regarded as having such an impairment.

29 U.S.C. § 706 (language concerning drug addicts and alcoholics omitted). The statute does not specify a durational threshold that must be met before an impairment may be deemed to result in a substantial limitation.

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After reviewing pertinent judicial precedent and extensively considering the enforcement impact of alternative positions, the Council unanimously adopted the following statement of policy that is being provided to all Executive agencies as guidance in implementing and enforcing the provisions of the Rehabilitation Act:

When applying title V of the Rehabilitation Act of 1973, as amended, it is necessary to determine whether a person with a particular physical or mental condition is a "handicapped individual." One aspect of this determination is whether the physical or mental condition, or impairment, "substantially limits one or more of such person's major life activities." The duration, or expected duration, of the impairment is a factor that may properly be considered when determining whether the impairment substantially limits one or more of such activities. However, in this context the duration of the impairment is not the controlling factor, as other factors such as the degree of the limitation must also be considered. Moreover, it must be emphasized that each case involving a determination of substantial limitation must be evaluated on its own merits.